

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Mercedes Bayon	Team: Squad #13	CCRB Case #: 201404833	<input checked="" type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input checked="" type="checkbox"/> Injury
Incident Date(s) Saturday, 05/17/2014 4:00 PM	Location of Incident: § 87(2)(b)	Precinct: 44	18 Mo. SOL 11/17/2015	EO SOL 11/17/2015	
Date/Time CV Reported Sat, 05/17/2014 4:57 PM	CV Reported At: CCRB	How CV Reported: Call Processing System	Date/Time Received at CCRB Sat, 05/17/2014 4:57 PM		

Complainant/Victim	Type	Home Address
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)

Witness(es)	Home Address
§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)

Subject Officer(s)	Shield	TaxID	Command
1. POM Justin Allen	06922	948605	044 PCT
2. POM Jose Espinal	20735	951717	044 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Sean Brown	24894	948704	044 PCT
2. POM Jawuan Hubbard	08746	949121	044 PCT
3. SGT Bolue Hui	3714	945833	PBBX
4. SGT Shaun Garrett	02245	926868	GANG BX

Officer(s)	Allegation	Investigator Recommendation
A.POM Justin Allen	Force: PO Justin Allen used physical force against § 87(2)(b)	§ 87(2)(b)
B.POM Jose Espinal	Force: PO Jose Espinal used physical force against § 87(2)(b)	§ 87(2)(b)
C.POM Jose Espinal	Abuse: PO Jose Espinal threatened to arrest § 87(2)(b)	§ 87(2)(b)
D.POM Justin Allen	Force: PO Justin Allen used a chokehold against § 87(2)(b)	§ 87(2)(b)
E.POM Justin Allen	Force: PO Justin Allen restricted § 87(2)(b)'s breathing.	§ 87(2)(b)
F.POM Justin Allen	Abuse: PO Justin Allen entered § 87(2)(b) § 87(2)(b), in the Bronx.	§ 87(2)(b)
G.POM Justin Allen	Force: PO Justin Allen used physical force against § 87(2)(b)	§ 87(2)(b)

Case Summary

On May 17, 2014, at approximately 4:00 p.m., § 87(2)(b) (encl. 17-28), § 87(2)(b) (encl. 29-36), § 87(2)(b) and § 87(2)(b) were inside of § 87(2)(b), in the Bronx. § 87(2)(b) and § 87(2)(b) were asleep in one of the bedrooms when § 87(2)(b) woke them up informing them that her boyfriend, § 87(2)(b) had appeared at the apartment for his clothes, asked her to have sex, and upon her refusal, hit § 87(2)(b) causing her to hit her head against the doorframe at the entrance to the apartment. § 87(2)(b) called 911 to report § 87(2)(b). Within approximately 5-10 minutes, PO Justin Allen and PO Jose Espinal, both of the 44th Precinct, responded. § 87(2)(b) and § 87(2)(b) exited the apartment and spoke to PO Allen and PO Espinal in the hallway. § 87(2)(b) spoke with the officers and informed them about what had occurred, during which time § 87(2)(b) came up the stairs. § 87(2)(b) pointed out § 87(2)(b) to the officers and identified him as the person in question. PO Allen and PO Espinal turned to § 87(2)(b) and told him to turn around and place his hands behind his back. As this was occurring, both § 87(2)(b) and § 87(2)(b) were yelling back and forth at one another. In response to the noise from this incident, the neighbor in § 87(2)(b) identified by the CCRB as § 87(2)(b) (encl. 37-38), exited her apartment. Upon § 87(2)(b) observing § 87(2)(b)'s behavior, she told § 87(2)(b) to calm down and that it would be "alright." Also during this time, neighbors from other floors began exiting their apartments and standing on the stairs observing the incident.

According to § 87(2)(b) as PO Allen and PO Espinal were giving § 87(2)(b) commands to place his hands behind his back, § 87(2)(b) stated, "For what?" while having his hands raised with his arms up. PO Allen and PO Espinal each grabbed one of § 87(2)(b)'s arms and placed him against the wall as they attempted to rear handcuff him. § 87(2)(b) was stiffening his arms not permitting the officers to handcuff him. PO Espinal and PO Allen then pushed § 87(2)(b) to the ground by using their knees against his legs to get him on the ground (**Allegation A and B**). § 87(2)(b) stated that PO Espinal put his arm around § 87(2)(b)'s neck and then tripped him to the ground while PO Allen was standing on the side of § 87(2)(b). Once § 87(2)(b) was on the ground, one officer had their knee on § 87(2)(b) while the other held him down. According to § 87(2)(b) PO Espinal and PO Allen dragged § 87(2)(b) approximately five feet through the hallway to where the elevators were located (**Allegation A and B**). PO Allen and PO Espinal still had not handcuffed § 87(2)(b) by this time and § 87(2)(b) surmised that they were having difficulty because he kept his arms stiff. According to § 87(2)(b) § 87(2)(b) extended her arm out towards § 87(2)(b) in an attempt to get him to calm down. § 87(2)(b) stated that she was unable to reach out and touch § 87(2)(b) because PO Allen told her twice to back up. PO Espinal took out his handcuffs, and told § 87(2)(b) to take § 87(2)(b) inside of the apartment or else she would be arrested (**Allegation C**).

According to § 87(2)(b) PO Espinal told § 87(2)(b) "That's obstructing arrest" and told her to calm down and to "get the fuck back." Both § 87(2)(b) and § 87(2)(b) went back to their apartment. § 87(2)(b) observed numerous officers running up the stairs with their batons out. § 87(2)(b) entered the apartment while § 87(2)(b) remained in the doorway with her arms extended so that officers could not enter her apartment. § 87(2)(b) stated that three officers ran into the apartment and she asked them why they had entered. Conversely, § 87(2)(b) stated that she began to explain the situation to one of the officers when PO Allen allegedly ran towards § 87(2)(b). § 87(2)(b) did not make any statements, and placed both of his hands on her shoulders and around her neck with his thumbs on her throat (**Allegation D**). While PO Allen had a hold of § 87(2)(b)'s throat, he pushed her back three

to four feet into the apartment (**Allegation F**), pushing the apartment door open and against the doorframe to the entrance of the kitchen. As PO Allen was pushing § 87(2)(b) he was squeezing her neck. § 87(2)(b) grabbed at his arms to pull him off of her as she was having difficulty breathing, but she was not sure if this was the result of PO Allen squeezing her neck or because she was hyperventilating out of fear (**Allegation E**). Two unknown officers then grabbed PO Allen and pulled him off of § 87(2)(b). As he was pulled away, PO Allen scratched § 87(2)(b)'s neck causing open cuts. According to § 87(2)(b) PO Allen then grabbed § 87(2)(b) and removed her from the apartment. However, § 87(2)(b) stated that it was not PO Allen who pulled her out of the apartment and admitted that she did try to pull away from the officer who pulled her from the apartment and handcuffed her (**Allegation G**). § 87(2)(b) stated that she was later informed by § 87(2)(b) that an unknown officer grabbed § 87(2)(b) and yanked her away from the apartment entrance and shoved her against a wall. § 87(2)(b) stated that after § 87(2)(b) was removed from the apartment, she was handcuffed and brought out of the building. At the conclusion of the incident, § 87(2)(b) who was not arrested, went to § 87(2)(b) where she was treated for marks on her neck and contusions on her back. She stated that § 87(2)(b) had contusions on her arm from when she was yanked from the doorway by an unknown officer.

According to § 87(2)(b) while she was in the holding cells she began screaming for medical attention because she suffers from asthma, but she did not direct her request at any specific officer. She further stated that she asked to go to the bathroom and was then taken to the bathroom by PO Espinal, but she never requested medical attention from him.

This case was re-assigned from Investigator Stanislov Sazonov to Investigator Benjamin Gilmore on December 31, 2014. This case was then re-assigned to Assistant Supervisor of Investigations Dane Buchanan on March 31, 2015 and then re-assigned to Investigator Mercedes Bayon on May 14, 2015.

Contact Attempts to Additional Civilians (encl. 112-115)

§ 87(2)(b) and § 87(2)(b) identified § 87(2)(b) and § 87(2)(b) as being present during the incident.

On May 28, 2014, Investigator Sazonov searched the Department of Corrections Inmate Look-Up Website, which revealed that § 87(2)(b) was not incarcerated. On June 17, 2014, Investigator Sazonov mailed § 87(2)(b) a please call letter and also called him twice, but there was no answer and no voicemail engaged. On July 29, 2015, Investigator Sazonov called § 87(2)(b) and there was no answer and no voicemail system engaged. On September 15, 2014, Investigator Sazonov called § 87(2)(b) and an automated system stated that the number was not in service and a second please call letter was mailed to his home address. Between January 27, 2015 and January 29, 2015, Investigator Gilmore called § 87(2)(b) three times and on each occasion there was no answer and no voicemail system engaged. On January 30, 2015, a final please call letter was mailed to § 87(2)(b). None of the letters were mailed back to the CCRB by the United States Postal Service.

On June 26, 2014, § 87(2)(b) provided a telephone statement to Investigator Sazonov and expressed that she did not wish to provide a formal statement to the CCRB.

Between June 17, 2014 and June 23, 2014, Investigator Sazonov mailed § 87(2)(b) a please call letter and also called her twice; however, on each occasion there was no answer and no

voicemail system engaged. Between June 29, 2014 and September 5, 2014, Investigator Sazonov mailed § 87(2)(b) a second please call letter and called her telephone number twice, which was disconnected on both occasions. On January 26, 2015, Investigator Gilmore called § 87(2)(b) and her telephone number was still disconnected. On January 28, 2015, Investigator Gilmore called § 87(2)(b) and told her to have § 87(2)(b) contact the CCRB. On January 30, 2015, he mailed a final please call letter to § 87(2)(b). None of the letters were returned to the CCRB by the United States Postal Service.

At the time of § 87(2)(b)'s and § 87(2)(b)'s CCRB interviews, they did not have any contact information for § 87(2)(b). On January 23, 2015, Investigator Gilmore contacted § 87(2)(b) who stated that she would try to obtain contact information for § 87(2)(b) and have him contact the CCRB. On January 28, 2015, Investigator Gilmore contacted § 87(2)(b) to obtain information for § 87(2)(b) at which time she stated that she would reach out to § 87(2)(b) on Facebook and direct him to contact the CCRB. On January 30, 2015, Investigator Gilmore mailed a please call letter for § 87(2)(b) to § 87(2)(b)'s home address.

On June 23, 2014, Investigator Sazonov conducted a canvass at § 87(2)(b). Investigator Sazonov spoke to § 87(2)(b) who stated that § 87(2)(b) was not available. Investigator Sazonov left a please call letter for § 87(2)(b) and also left please call letters at various apartments on the fourth, fifth, and sixth floors of the building.

On September 15, 2014, Investigator Sazonov conducted a Lexis Nexis search which identified various neighbors on § 87(2)(b). Investigator Sazonov mailed letters to each of the identified neighbors and also called telephone numbers that were identified for three tenants. Investigator Sazonov spoke to the three tenants for whom he obtained telephone numbers for and they confirmed that they did not witness the incident in question. Further, the letters for § 87(2)(b) were returned to the CCRB as undeliverable.

Mediation, Civil, and Criminal Conviction Histories (encl. 106-111)

This case was not eligible for mediation because § 87(2)(b) and § 87(2)(b) were arrested as a result of this incident. A Notice of Claim Inquiry was submitted and will be included in the case file upon receipt.

§ 87(2)(b) § 87(2)(c), § 87(2)(a) 160.50

§ 87(2)(b) § 87(2)(c)

A search of the Booking, Arraignment, and Disposition System records revealed that § 87(2)(b) does not have any previous criminal convictions.

Civilian and Officer CCRB Histories

This is the first CCRB complaint filed by § 87(2)(b) and the first in which § 87(2)(b) and § 87(2)(b) have been party to (encl. 3-5).

PO Espinal has been a member of service for three years and has two previous CCRB complaints involving three allegations, none of which were substantiated § 87(2)(g) (encl. 1).

PO Allen has been a member of service for four years and has no previous CCRB complaints and one other open CCRB complaint against him (encl. 2).

Findings and Recommendations

Allegations Not Pleaded

§ 87(2)(b) alleged that PO Espinal told § 87(2)(b) to “get the fuck back.” However, § 87(2)(b) did not allege that PO Espinal made the above statement. § 87(2)(g)

§ 87(2)(b) stated that she was screaming in the holding cells for medical attention because she suffers from asthma; however, she did not direct this at any particular officer. Further she stated that she asked to be taken to the bathroom and that when PO Espinal entered the holding cells and took her to the bathroom, she did not ask him for medical attention. § 87(2)(g)

§ 87(2)(b) stated that she was later informed by § 87(2)(b) that an officer grabbed her by the arm and yanked her away from the entrance of the apartment. However, § 87(2)(b) did not cooperate and § 87(2)(b) did not witness this occur herself. § 87(2)(g)

Explanation of Subject Officer Identification

§ 87(2)(b) identified PO Allen by name because she read his nameplate and § 87(2)(b) also identified PO Allen by his nameplate and further identified PO Allen’s partner by reading his nameplate as PO Espinal. Both § 87(2)(b) and § 87(2)(b) testified that they were the first officers on the scene. Further, the officers both acknowledged their involvement in this incident. As such they have been identified as subject officers and the respective allegations have been pleaded against them.

§ 87(2)(g)

Recommendations

Allegation A: Force: PO Justin Allen used physical force against § 87(2)(b)

Allegation B: Force: PO Jose Espinal used physical force against § 87(2)(b)

It is undisputed that PO Espinal and PO Allen used force against § 87(2)(b) in order to effect his arrest.

According to § 87(2)(b) (encl. 17-28) and § 87(2)(b) (encl. 29-36), while § 87(2)(b) was speaking with PO Espinal and PO Allen about § 87(2)(b) striking § 87(2)(b) walked up the stairs to the fifth floor and § 87(2)(b) identified him to the officers as her boyfriend who struck her. § 87(2)(b) stated that PO

Allen and PO Espinal turned to § 87(2)(b) and told him to turn around and place his hands behind his back. § 87(2)(b) placed his hands in the air in front of him with his palms up. PO Espinal and PO Allen grabbed each of § 87(2)(b)'s arms and placed him against a wall to rear handcuff him. According to § 87(2)(b) and § 87(2)(b) was not combative, but rather he stiffened his arms preventing the officers from handcuffing him. § 87(2)(b) described that PO Allen and PO Espinal tripped § 87(2)(b) down to the ground by placing their knees in his legs to get him down to the ground because § 87(2)(b) refused to give the officers his arms. § 87(2)(b) described that PO Espinal put his arm around § 87(2)(b)'s neck and tripped him down to the ground and added that he was already in handcuffs by this time. Both § 87(2)(b) and § 87(2)(b) stated that PO Allen and PO Espinal held § 87(2)(b) down to the ground as they continued to try and handcuff him.

§ 87(2)(b) alleged that PO Allen and PO Espinal then dragged § 87(2)(b) approximately five feet towards the elevator, while § 87(2)(b) stated that the struggle between § 87(2)(b), PO Espinal, and PO Allen moved from being against the wall, on the ground, and then near the elevator. She stated that she was not sure how they moved to these different locations, but then stated that § 87(2)(b) was dragged there or it was the just a result of the "scuffling" to handcuff § 87(2)(b). According to § 87(2)(b) (encl. 37-38), § 87(2)(b) was already on the ground when she exited her apartment. She observed the officers attempting to handcuff § 87(2)(b) who was twisting and turning his body and yelling at § 87(2)(b). § 87(2)(b) did not see any officer strike § 87(2)(b) and though she acknowledged that he was brought to the other side of a door that separates part of the hallway, she did not see the officers drag § 87(2)(b).

According to PO Allen (encl. 64-66) and PO Espinal (encl. 56-59), prior to § 87(2)(b) appearing in the hallway, they spoke to § 87(2)(b) who expressed that she wanted to press charges against § 87(2)(b) for assaulting her. During this conversation, § 87(2)(b) appeared in the hallway and § 87(2)(b) identified him to the officers. Both PO Espinal and PO Allen stated that they approached § 87(2)(b) and directed him to turn around because he was under arrest. Both officers attempted to handcuff § 87(2)(b) by grabbing at his arms, but he resisted arrest. Both officers testified that they were able to place one of § 87(2)(b)'s arms in handcuffs while he was standing, but he refused to provide his hands, moved his body around, and moved away from the officers. Due to § 87(2)(b)'s level of resistance, PO Allen and PO Espinal admittedly took § 87(2)(b) to the ground by grabbing his body and directing him face down. While on the ground, § 87(2)(b) continued to resist by not giving his hands and by moving his body around. PO Espinal and PO Allen called for additional units as § 87(2)(b) began to interfere and a crowd formed. After a few minutes of struggling with § 87(2)(b) on the ground, PO Espinal and PO Allen were able to rear handcuff him. According to PO Espinal, § 87(2)(b) was stood up from the ground and walked to the elevators and was not dragged. According to PO Allen, § 87(2)(b) was told to stand up after he was handcuffed; however, he refused to and the officers dragged him a few feet towards the elevator where he was again told to stand up and he complied.

NYPD Patrol Guide procedure 203-11 states that only the minimum amount of force necessary to overcome resistance should be used to effect an arrest (encl. a-b).

§ 87(2)(g)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(g)

§ 87(2)(b)

Allegation C: Abuse of Authority: PO Jose Espinal threatened to arrest § 87(2)(b)

It is undisputed that § 87(2)(b) was threatened with arrest following her interference with § 87(2)(b)'s arrest. According to § 87(2)(b) (encl. 17-28) and § 87(2)(b) (encl. 29-36), § 87(2)(b) was screaming and not remaining calm during his arrest. § 87(2)(b) admittedly extended her arm in an attempt to touch § 87(2)(b) and get him to calm down. § 87(2)(b) testified that she approached the officers as they were arresting § 87(2)(b) and asked if she could calm him down, but PO Allen continued to tell her to stay away and back up. § 87(2)(b) ignored his directions and reached her arm out to § 87(2)(b) but was unable to make contact because the officers kept telling her to back up. After PO Allen told § 87(2)(b) to back up twice, PO Espinal stood up, took out his handcuffs, and told § 87(2)(b) to take § 87(2)(b) into the apartment or else she would be arrested, after which § 87(2)(b) retreated back into her apartment. According to § 87(2)(b) after § 87(2)(b) extended her arm towards § 87(2)(b) PO Espinal stood up, removed his handcuffs, and told § 87(2)(b) "that's obstructing arrest," and they then retreated to their apartment. According to § 87(2)(b) (encl. 37-38), § 87(2)(b) was yelling and had to be pulled away from § 87(2)(b) by family members. § 87(2)(b) stated that during this time, PO Allen and PO Espinal repeatedly told § 87(2)(b) "You're interfering, you're going to jail."

According to PO Espinal (encl. 56-59), § 87(2)(b) grabbed his arms and pulled them off of § 87(2)(b) while she stated not to arrest him. In response, PO Espinal grabbed § 87(2)(b)'s arm and told her not to touch him and to get back. PO Espinal recalled that § 87(2)(b) was informed that she could be arrested; however, he did not recall if it was him or PO Allen who informed her that she could be arrested. During PO Allen's CCRB interview (encl. 64-66), he stated that while he and PO Espinal were effecting the arrest of § 87(2)(b) § 87(2)(b) jumped on PO Espinal's back and § 87(2)(b) jumped on PO Allen's back. PO Allen stated that at this point he told § 87(2)(b) that he was going to arrest her for obstructing governmental administration if she did not stand back, and she did not comply until § 87(2)(b) grabbed her and pulled her away. After § 87(2)(b) was secured in handcuffs, § 87(2)(b) was arrested for obstruction of governmental administration in the second degree.

New York State Penal Law 195.05 states that, "a person is guilty of obstructing governmental administration when he intentionally obstructs, impairs, or prevents the administration of law or other governmental function or prevents or attempts to prevent a public servant from performing an official function by means of intimidation, physical force, or interference" (encl. c).

§ 87(2)(g)

Allegation D: Force: PO Justin Allen used a chokehold against § 87(2)(b)

Allegation E: Force: PO Justin Allen restricted § 87(2)(b) **s breathing.**

§ 87(2)(b) (encl. 17-28) alleged that as she was standing at her apartment door after retreating into her apartment with § 87(2)(b) PO Allen rushed towards the apartment

and when he reached § 87(2)(b) who was standing at the doorway, PO Allen placed both of his hands on § 87(2)(b)'s shoulders and around her neck with his thumbs on her throat. When PO Allen made contact with § 87(2)(b)'s throat, he pushed her backwards three or four feet into the apartment, opening the apartment door, and striking § 87(2)(b)'s back against the doorframe of the entrance to the apartment's kitchen. As PO Allen was holding § 87(2)(b) by the neck and pushing her backwards, he felt him squeeze her neck and she began having trouble breathing, but she was not sure if this was the result of PO Allen squeezing her neck or because she was hyperventilating out of fear. § 87(2)(b) then grabbed PO Allen's arms to get free. Additional officers entered and pulled PO Allen off of § 87(2)(b)'s neck and as PO Allen lost grip of her neck he scratched her neck causing open cuts. During § 87(2)(b)'s CCRB interview (encl. 29-36) she stated that several officers entered into the apartment, and one of them choked § 87(2)(b) by grabbing her neck with one hand with his palm on the front of her neck. § 87(2)(b) and § 87(2)(b) tried to push the officer out of the apartment and away from § 87(2)(b) who § 87(2)(b) believed was out of breath. According to § 87(2)(b) (encl. 37-38), by this time in the incident, she had already stepped into her apartment and did not see officers enter § 87(2)(b) or whether officer choked any female.

According to PO Allen (encl. 64-66), after § 87(2)(b) was secured in handcuffs, PO Allen approached § 87(2)(b) where § 87(2)(b) and § 87(2)(b) retreated. PO Allen pushed the door open and stepped inside and someone from inside of the apartment tried to push the door closed on him. PO Allen pushed the door open and observed § 87(2)(b) and proceeded to grab her to place her in handcuffs. PO Allen stated that § 87(2)(b) grabbed his arm. In response, PO Allen pushed her in her chest backward away from him. He denied making contact with her neck or placing her in any kind of chokehold or seeing § 87(2)(b) with any injuries to her neck. According to PO Espinal (encl. 56-59), he remained with § 87(2)(b) by the elevator and never observed PO Allen enter the apartment, arrest § 87(2)(b) or choke § 87(2)(b). Further, PO Sean Brown (encl. 69-71) and Sgt. Shaun Garrett (encl. 75-76) also stated that they did not observe any officer place anyone in a chokehold, while PO Jawuan Hubbard (encl. 84-85) and Sgt. Bolue Hui (encl. 80-81) did not have a recollection of the incident.

According to NYPD Patrol Guide procedure 203-11, "Members of the New York City Police department will not use chokeholds. A chokehold shall include, but is not limited to, any pressure to the throat or windpipe, which may prevent or hinder breathing or reduce the intake of air" (encl. a-b).

§ 87(2)(g)

[REDACTED]

Allegation F: Abuse of Authority: PO Justin Allen entered § 87(2)(b), in the Bronx.

It is undisputed that PO Allen entered § 87(2)(b). According to § 87(2)(b) (encl. 17-28), after § 87(2)(b) was directed to back away and told that she could be arrested, § 87(2)(b) and § 87(2)(b) retreated into the apartment. § 87(2)(b) observed numerous additional officers coming up the stairs to the fifth floor, at which time she stood in the doorway of the apartment while § 87(2)(b) entered inside. § 87(2)(b) explained that she had her arms extended out blocking entry into the apartment and told the officers that they were not allowed in the apartment, but that they could speak in the hallway. Following this, § 87(2)(b) observed PO Allen rush towards her. He then choked her and pushed her into the apartment. After PO Allen was removed from having a hold on § 87(2)(b), PO Allen grabbed § 87(2)(b) and pulled her out of the apartment with him and arrested her. During § 87(2)(b)'s CCRB interview (encl. 29-36), she testified that after she and § 87(2)(b) retreated into their apartment, § 87(2)(b) attempted to close the door and they observed several officers running up the stairs to the fifth floor. § 87(2)(b) and § 87(2)(b) told the officers that they could not enter the apartment; however, § 87(2)(b) stated that three of the officers rushed into the apartment and one of them then choked § 87(2)(b). § 87(2)(b) testified that she and § 87(2)(b) tried to push this officer out of the apartment and another officer grabbed § 87(2)(b) and pulled her out of the apartment and placed her in handcuffs.

During PO Allen's (encl. 64-66) and PO Espinal's (encl. 56-59) CCRB interview, they testified that § 87(2)(b) interfered with the arrest of § 87(2)(b). PO Allen and PO Espinal stated that § 87(2)(b) was told numerous times to back up and not to interfere, but she did not comply. § 87(2)(b) then pulled her away telling her not to interfere, and she responded by stating, "fuck that." According to PO Espinal, § 87(2)(b) was informed by either himself or PO Allen that she could be arrested for intervening. According to PO Allen after they handcuffed § 87(2)(b), § 87(2)(b) returned and again advanced towards him and grabbed him. PO Allen attempted to hold her back and called for back-up. At this time, § 87(2)(b) and § 87(2)(b) retreated back into the apartment. PO Allen stated that he feared that either § 87(2)(b) or § 87(2)(b) could have entered the apartment to obtain a weapon as the building is known for gang activity. While PO Espinal remained with § 87(2)(b) by the elevator, PO Allen approached § 87(2)(b) and observed that the door was partially ajar. PO Allen pushed the door open, but the door was pushed closed on him. He pushed the door open and stepped inside. PO Allen observed § 87(2)(b) standing in front of him. He grabbed her and placed her in handcuffs. PO Allen stated that his reason for entering the apartment was to arrest § 87(2)(b) for obstruction of governmental administration.

People v. McBride, 14 N.Y. 3d 440 holds that officers may enter a dwelling without a warrant if they have probable cause to believe the suspect committed a crime and exigent circumstances justify the warrantless entry. In determining whether exigent circumstances are present, the following factors are considered: (1) the gravity or violent nature of the offense; (2) whether the suspect is reasonably believed to be armed; (3) a clear showing of probable cause to believe that the suspect committed the crime; (4) strong reason to believe that the suspect is in the premises being entered; (5) a likelihood that the subject will escape if not swiftly apprehended; and (6) the peaceful circumstances of the entry. The ultimate inquiry is whether in light of all the facts of a particular case there is an urgent need justifying the warrantless entry (encl. d-j). According to *People v. Cruz*, 41 Misc. 3d 1222(A) (2013), one example of exigent circumstance is "hot pursuit" – that is, the police are actively pursuing a suspect who is in the process or fleeing from a recently committed crime. However, there is an extremely important caveat to foregoing

precedent; this exception to the warrant requirement applies to police pursuit into a residence for felony charges. New York has generally followed the rule prohibiting police entry into premises where the charge is only a misdemeanor. Without any exigent circumstance or a strong state interest to justify their warrantless entry, the police are without authority to effectuate an arrest of the defendant for a misdemeanor charge (encl. k-n).

§ 87(2)(g)

Allegation G: Force: PO Justin Allen used physical force against § 87(2)(b)

It is undisputed that PO Allen used force against § 87(2)(b) at the time she intervened with § 87(2)(b)'s arrest and at the time she was being placed under arrest. Although § 87(2)(b) and § 87(2)(b) made no mention of PO Allen pushing § 87(2)(b) back away from § 87(2)(b)'s arrest, PO Allen admitted to doing so during his CCRB interview. According to PO Allen (encl. 64-66), as he and PO Espinal were arresting § 87(2)(b), § 87(2)(b) interfered by reaching towards § 87(2)(b) and also tried to pull PO Allen away by pulling at his uniform. PO Allen stated that when § 87(2)(b) began interfering, he pushed her and told her to stand back. By PO Allen's own admission, the push caused her to hit her back against the wall. He stated that § 87(2)(b) advanced a second time and then jumped on PO Allen's back while § 87(2)(b) jumped on PO Espinal's back.

PO Allen told § 87(2)(b) that she could be arrested for her conduct for obstruction of governmental administration if she did not stand back and § 87(2)(b) did not comply. PO Allen stated that § 87(2)(b) was pulled away by § 87(2)(b) however, PO Espinal did not recall if she was pulled away. Although neither § 87(2)(b) nor § 87(2)(b) alleged the above, they alleged that § 87(2)(b) was grabbed and pulled out of her apartment and placed under arrest. § 87(2)(b) (encl. 29-36) stated that after officers entered her apartment, one of the officers choked § 87(2)(b) and another grabbed § 87(2)(b)'s left arm and pulled her out of the apartment causing a bruise on her arm. § 87(2)(b) acknowledged that she tried to pull away; however, she was pulled out of the apartment and pushed against a wall in the hallway and handcuffed. According to § 87(2)(b) (encl. 17-28), PO Allen grabbed § 87(2)(b)'s arm and pulled her out of the apartment and into the hallway where she was placed against a wall and handcuffed.

According to PO Allen (encl. 64-66) and PO Espinal (encl. 56-59), § 87(2)(b) was interfering with § 87(2)(b)'s arrest, which all civilians acknowledged to some degree. Further PO Allen stated that after § 87(2)(b) was secured in handcuffs, he left § 87(2)(b) with PO Espinal and PO Allen approached § 87(2)(b). He stated that he stepped inside and observed § 87(2)(b). He grabbed her to place her in handcuffs; although she flailed, he was able to place her in handcuffs within approximately five seconds.

NYPD Patrol Guide 203-11 states that only the minimum amount of force necessary to overcome resistance should be used to effect an arrest (encl. a-b).

§ 87(2)(g)

Pod: 13

Investigator: _____
Signature Print Date

Supervisor: _____
Title/Signature Print Date

Reviewer: _____
Title/Signature Print Date

Reviewer: _____
Title/Signature Print Date